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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,298	02/20/2001	Eshwar Mahenthiralingam	UBCP017	4849

21121 7590 11/04/2002
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EXAMINER

SHEINBERG, MONIKA B

ART UNIT	PAPER NUMBER
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1634

DATE MAILED: 11/04/2002 8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/763,298

Applicant(s)

MAHENTHIRALINGAM, ESHWAR

Examiner

Monika B Sheinberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: _____

DETAILED ACTION***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

- Group I, claim(s) 1-7, drawn to method for identification and speciation of bacteria of the *Burkholderia cepacia* complex in a sample. (If this group is elected, please see *primer pair restriction A* further below).
- Group II, claim(s) 8-12, 18 and 19, drawn to a composition of a pair of polynucleotide primers that hybridize to SEQ ID NOs: 1, 2 and 5-19. (If this group is elected, please see *primer pair restriction and sequence restriction B* further below).
- Group III, claim(s) 13-16 and 20, drawn to a composition of a genomovar-specific primer pair. (If this group is elected, please see *genomovar-specific primer pair restriction C* further below).
- Group IV, claim(s) 17, drawn to a vaccine.

The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The method of Group I does not require the primer pair hybridization to any specific sequence, such as SEQ ID NOs: 1, 2 and 5-19, as required by the composition of Group II. The method of Group I also does not require the genomovar-specific primer pairs as required by the composition of Group III, for the recited method of identification and speciation. Groups I-III lack the special technical feature of flagellin-related antigens of Group IV that is drawn to a vaccine composition.

Primer pair restriction: A

The primer pairs of Group I; SEQ ID NOs: 3 - 4; and 20 - 21; lack the same technical features due to the separate and distinct differences in sequence structure and function of primer pairs. If Group I is elected, applicant must elect one of the following primer pairs:

- SEQ ID NOs: 3 and 4; OR
- SEQ ID NOs: 20 and 21.

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Primer pair restriction and Sequence restriction: B

The primer pairs of Group II; SEQ ID NOs: 3 - 4; and 20 - 21; lack the same technical features due to the separate and distinct differences in sequence structure and function of primer pairs. If Group II is elected, applicant must elect one of the following primer pairs:

- SEQ ID NOs: 3 and 4; OR
- SEQ ID NOs: 20 and 21.

In addition, Group II detailed above reads on patentably distinct sequences to which an elected primer pair must hybridize to. Each sequence (SEQ ID NOs: 1, 2 and 5-19) is patentably distinct because they are unrelated sequences, and a further restriction is applied to this Group. If Group II is elected, applicant must elect a single nucleic acid sequence of the following sequences:.

- SEQ ID NO: 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 **OR** 19. (See MPEP 803.04).

It is noted that this is a restriction requirement to a single sequence and NOT a specie election requirement. MPEP 803.04 states:

"Nucleotide sequences encoding different proteins are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute independent and distinct inventions with the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq."

It has been determined that 1(ONE) sequence constitutes a reasonable number for examination purposes under the present conditions. At present the huge number of submissions of claims directed to various sequences, such as nucleic acids or polypeptides, is so large that the election of 1(one) sequence of this type is now deemed to be practically appropriate so as to not overwhelm the examination and search processes for such claims.

Examination will be restricted to only the elected sequence.

Genomovar-specific primer pair restriction: C

The genomovar-specific primer pairs of Group IV lack the same technical features due to the separate and distinct differences in sequence structure and function of primer pairs. If Group III is elected, applicant must elected one primer pair:

- SEQ ID NOs: 23 and 24; OR
- SEQ ID NOs: 25 and 26; OR
- SEQ ID NOs: 27 and 28. OR
- SEQ ID NOs: 29 and 30; OR
- SEQ ID NOs: 31 and 32; OR
- SEQ ID NOs: 33 and 34.

Conclusion

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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Inquiries

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 CFR § 1.6(d)). The CM1 Fax Center number is (703) 308-4242.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monika B. Sheinberg, whose telephone number is (703) 306-0511. The examiner can normally be reached on Monday-Friday from 1 P.M to 8 P.M. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones, can be reached on (703) 308-1152.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Patent Analyst, Chantae Dessau, whose telephone number is (703) 605-1237, or to the Technical Center receptionist whose telephone number is (703) 308-0196.

October 15, 2002

Monika B. Sheinberg
Art Unit 1634

MBS

Jehanne Souaya
JEHANNE SOUAYA
PATENT EXAMINER
October 25, 2002